

**Illinois Department of Revenue  
Regulations**

<b>Title 86 Part 150 Section 150.201 General Definitions</b>
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**TITLE 86: REVENUE**

**PART 150  
USE TAX**

**SUBPART B: DEFINITIONS**

**Section 150.201 General Definitions**

a) Use

"Use" means the exercise by any person of any right or power over tangible personal property incident to the ownership of that property, except that it does not include the sale of such property in any form as tangible personal property in the regular course of business to the extent that such property is not first subjected to a use for which it was purchased, and does not include the use of such property by its owner for demonstration purposes: Provided that the property purchased is deemed to be purchased for the purpose of resale, despite first being used, to the extent to which it is resold as an ingredient of an intentionally produced product or by-product of manufacturing. "Use" does not mean the interim use of tangible personal property by a retailer before he sells such tangible personal property and does not mean the physical incorporation of tangible personal property, to the extent not first subjected to a use for which it was purchased, as an ingredient or constituent, into other tangible personal property:

- 1) which is sold in the regular course of business or
- 2) which the person incorporating such ingredient or constituent therein has undertaken at the time of such purchase to cause to be transported in interstate commerce to destinations outside the State of Illinois: Provided that the property purchased is deemed to be purchased for the purpose of resale, despite first being used, to the extent to which it is resold as an ingredient of an intentionally produced product or by-product of manufacturing.

b) Purchase at Retail

"Purchase at retail" means the acquisition of the ownership of, or title to, tangible personal property through a sale at retail.

c) Purchaser

"Purchaser" means anyone who, through a sale at retail, acquires the ownership of tangible personal property for a valuable consideration.

d) Sale at Retail

"Sale at retail" means any transfer of the ownership of or title to tangible personal property to a purchaser, for the purpose of use, and not for the purpose of resale in any form as tangible personal property to the extent not first subjected to a use for which it was purchased, for a valuable consideration: Provided that the property purchased is deemed to be purchased for the purpose of resale, despite first being used, to the extent to which it is resold as an ingredient of an intentionally produced product or by-product of manufacturing. For this purpose, slag produced as an incident to manufacturing pig iron or steel and sold is considered to be an intentionally produced by-product of manufacturing. "Sale at retail" includes any such transfer made for resale unless made in compliance with Section 2c of the Retailers' Occupation Tax Act, as incorporated by reference into Section 12 of the Use Tax Act. Transactions whereby the possession of the property is transferred but the seller retains the title as security for payment of the selling price are sales.

e) Selling Price

"Selling price" means the consideration for a sale valued in money whether received in money or otherwise, including cash, credits, property other than as hereinafter provided, and services, but not including the value of or credit given for traded-in tangible personal property where the item that is traded-in is of like kind and character as that which is being sold, and shall be determined without any deduction on account of the cost of the property sold, the cost of materials used, labor or service cost or any other expense whatsoever. "Selling price" does not include interest or finance charges which appear as separate items on the bill of sale or sales contract nor charges that are added to prices by sellers on account of the seller's tax liability under the Retailers' Occupation Tax Act, or on account of the seller's duty to collect, from the purchaser, the tax that is imposed by the Use Tax Act, or on account of the seller's tax liability under the Home Rule Municipal Retailers' Occupation Tax Act (Ill. Rev. Stat. 1989, ch. 24, par. 8-11-1), on account of the seller's tax liability under the Non-Home Rule Municipal Retailers' Occupation Tax Act (Ill. Rev. Stat. 1989, ch. 24, par. 8-11-1.3), on account of the seller's tax liability under the Home Rule County Retailers' Occupation Tax Act (Ill. Rev. Stat., 1989, ch. 34, par. 5-1006), on account of the seller's tax liability under Section 4 of the Water Commission Act of 1985 (Ill. Rev. Stat. 1989, ch. 111 2/3, par. 254), on account of the seller's tax liability under Section 5.01(b) of the Local Mass Transit District Act (Ill. Rev. Stat. 1989, ch. 111 2/3, par. 355.01) or Section 4.03(e) of the Regional Transportation Authority Act (Ill. Rev. Stat. 1989, ch. 111 2/3, par. 704.03). "Selling price" shall include charges that are added to prices by sellers on account of the seller's liability under the Cigarette Tax Act (Ill. Rev. Stat. 1989, ch. 120, par. 453.1 et seq.) on account of the seller's duty to collect, from the purchaser, the tax imposed under the Cigarette Use Tax Act (Ill. Rev. Stat. 1989, ch. 120, par. 453.31 et seq.) and on account of the seller's duty to collect, from the purchaser, any cigarette tax imposed by a home rule unit. The phrase "like kind and character" shall be liberally construed (including but not limited to any form of motor vehicle for any form of motor vehicle, or any kind of farm or agricultural implement for any other kind of farm or agricultural implement), while not including a kind of item which, if sold at retail by that retailer, would be exempt from Retailers' Occupation Tax and Use Tax as an isolated or occasional sale.

f) Department

"Department" means the Department of Revenue.

g) Person

"Person" means any natural individual, firm, partnership, association, joint stock company, joint adventure, public or private corporation, or a receiver, executor, trustee, conservator or other representative appointed by order of any court.

h) Retailer

"Retailer" means and includes every person engaged in the business of selling tangible personal property for use, and not for resale in any form. Effective October 1, 1974, a person who is the recipient of a grant or contract under Title VII of the Older Americans Act of 1965 (42 U.S.C.A. 3001 et seq.) and serves meals to participants in the Federal Nutrition Program for the Elderly in return for contributions established in amount by the individual participant pursuant to a schedule of suggested fees as provided for in the Federal Act is not a retailer under the Use Tax Act with respect to such transactions.

1) Nonprofit Sellers

A person whose activities are organized and conducted primarily as a not-for-profit service enterprise, and who engages in selling tangible personal property at retail (whether to the public or merely to members and their guests) shall be deemed to be a retailer with respect to such transactions, excepting only a person organized and operated exclusively for charitable, religious or educational purposes to the extent of sales by such person to its members, students, patients or inmates of tangible personal property to be used primarily for the purposes of such person, or to the extent of sales by such person of tangible personal property which is not sold or offered for sale by persons organized for profit.

2) Special Order Sales

A person who holds himself out as being engaged (or who habitually engages) in selling tangible personal property at retail shall be deemed to be a retailer hereunder with respect to such sales (and not primarily in a service occupation) notwithstanding the fact that such person designs and produces such tangible personal property on special order for the purchaser and in such a way as to render the property of value only to such purchaser, if such tangible personal property so produced on special order serves substantially the same function as stock or standard items of tangible personal property that are sold at retail.

3) When Construction Contractor or Real Estate Developer is a Retailer

A construction contractor or real estate developer is a retailer under the Use Tax Act to the same extent to which he is a retailer under the Retailers' Occupation Tax Act, as described in Section 130.1940 of the Retailers' Occupation Tax.

i) Retailer Maintaining a Place of Business in This State

- 1) "Retailer maintaining a place of business in this State", or any like term, shall mean and include any retailer having or maintaining within this State, directly or by a subsidiary, an office, distribution house, sales house, warehouse or other place of business, or any agent or other representative operating within this State under the authority of the retailer or its subsidiary, irrespective of whether such place of business or agent or other representative is located here permanently or temporarily, or whether such retailer or subsidiary is licensed to do business in this State;
- 2) *Soliciting orders for tangible personal property by means of a telecommunication or television shopping system (which utilizes toll free numbers) which is intended by the retailer to be broadcast by cable television or other means of broadcasting, to consumers located in this State;*
- 3) *Pursuant to a contract with a broadcaster or publisher located in this State, soliciting orders for tangible personal property by means of advertising which is disseminated primarily to consumers located in this State and only secondarily to bordering jurisdictions;*
- 4) *Soliciting orders for tangible personal property by mail if the solicitations are substantial and recurring and if the retailer benefits from any banking, financing, debt collection, telecommunication, or marketing activities occurring in this State or benefits from the location in this State of authorized installation, servicing, or repair facilities;*
- 5) *Being owned or controlled by the same interests which own or control any retailer engaging in business in the same or similar line of business in this State;*
- 6) *Having a franchisee or licensee operating under its trade name if the franchisee or licensee is required to collect the tax under this Section;*
- 7) *Pursuant to a contract with a cable television operator located in this State, soliciting orders for tangible personal property by means of advertising which is transmitted or distributed over a cable television system in this State; or*
- 8) *engaging in activities in Illinois, which activities in the state in which the retail business engaging in such activities is located would constitute maintaining a place of business in that state (Section 2 of the Use Tax Act) (Ill. Rev. Stat. 1989, ch. 120, par. 439.2). For the purpose of determining such state of domicile, the Department will look to the place at which the selling activity takes place. The seller's acceptance of the purchase order or other contracting action in making the sale is the single most important factor in determining selling location.*

- 9) It does not matter that an agent may engage in business on his own account in other transactions, nor that such agent may act as agent for other persons in other transactions, nor that he is not an employee but is an independent contractor acting as agent. The term "agent" is broader than the term "employee". "Agent" includes anyone acting under the principal's authority in an agency capacity.

(Source: Amended at 15 Ill. Reg. 5861, effective April 5, 1991)